

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MINTEL LEARNING TECHNOLOGY,
INC.,

CASE NO. 5:11-CV-01504-EJD

**AMENDED ORDER GRANTING
MOTION TO DISMISS WITH LEAVE TO
AMEND**

Plaintiff,

v.

AMBOW EDUCATION HOLDING, LTD.,

[Re: Docket Item Nos. 43, 45, 46]

Defendant.

Presently before the court is the motion of Ambow Education Holding, Ltd. (“Ambow”) to dismiss the complaint for failure to state a claim. The court has determined that the motion is suitable for determination without oral argument pursuant to Civil L.R. 7-1(b). For the reasons set forth below, the motion is granted.

In its order resolving issues of subject matter jurisdiction and service of process (Nov. 2, 2011, ECF No. 42), the court deemed service effective upon Ambow and ordered Ambow to respond to the complaint on or before Nov. 28, 2011. Ambow timely filed a motion to dismiss the complaint for failure to state a claim. Plaintiff Intel Learning Technology, Inc. (“Intel”) filed an amended complaint on Dec. 5, 2011, without leave of court. Intel’s opposition to Ambow’s motion to dismiss does not address the motion’s substantive arguments, but instead requests that the court allow withdrawal of the improperly-filed amended complaint and formally grant Intel leave to amend. Ambow’s reply in support of its motion to dismiss acts as an opposition to Intel’s request

1 for leave to file its amended complaint.

2 The parties are correct that Mintel's amended complaint (Dec. 5, 2011, ECF No. 45) was
3 improperly filed because Mintel failed to obtain leave of court. It is therefore stricken. Mintel's
4 subsequent request for leave to file an amended complaint was also improper; it should have been
5 made as a noticed motion pursuant to Civil L.R. 7-2. Accordingly, it is denied. Ambow's motion to
6 dismiss stands unopposed, so it is granted. Mintel is now granted leave to amend its complaint.

7 Good cause therefore appearing, IT IS HEREBY ORDERED that the Amended Complaint
8 (Dec. 5, 2011, ECF No. 45) is STRICKEN.

9 IT IS FURTHER ORDERED that Mintel's request for leave to amend the complaint (Opp.
10 Mot. Dismiss, Dec. 12, 2011, ECF No. 46) is DENIED WITHOUT PREJUDICE for failing to
11 comply with Civil L.R. 7.

12 IT IS FURTHER ORDERED that Ambow's Motion to Dismiss (Nov. 28, 2011, ECF No. 43)
13 is GRANTED WITH LEAVE TO AMEND. Mintel shall file an amended complaint on or before
14 January 13, 2012, or face dismissal of the action in its entirety.

15 IT IS FURTHER ORDERED that Ambow shall respond to any amended complaint on or
16 before February 3, 2012. If that response is a motion to dismiss, Mintel's opposition shall be due
17 February 17, 2012, and Ambow's reply shall be due February 24, 2012. That motion to dismiss will
18 be heard on March 2, 2012 at 9:00 a.m in Courtroom 4, 5th Floor, 280 S. First St., San Jose,
19 California.

20 IT IS FURTHER ORDERED that the Case Management Conference currently scheduled for
21 January 6, 2012, is continued to March 2, 2012 at 10:00 a.m.

22 IT IS FURTHER ORDERED that this order—which is amended solely to correct the date of
23 the motion hearing and case management conference—supersedes yesterday's earlier order in this
24 case.

25 **IT IS SO ORDERED.**

26
27 Dated: January 6, 2012


EDWARD J. DAVILA
United States District Judge